



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION SPECIAL MEETING MINUTES

SPECIAL MEETING

SEPTEMBER 15, 2009

PRESENT: Tanda, Mueller, Escobar, Hart, Liegl, Koepp-Baker, Moniz

ABSENT: None

LATE: None

STAFF: Community Development Director (CDD) Molloy Previsich, Senior Planner (SP) Linder, and Municipal Services Assistant (MSA) Borowski.

Chair Tanda called the meeting to order at 7:03 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag.

DECLARATION OF POSTING OF AGENDA

Support staff Borowski certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Tanda opened, and then closed, the floor to public comment for matters not appearing on the agenda as none were in attendance indicating a wish to address such matters.

MINUTES: CDD Molloy Previsich noted a correction - the minutes from the August 25th meeting were included in the Commissioners' packets, but not listed on the agenda. Action on the minutes will be taken at the next meeting. Chair Tanda asked for comments, but none were given. All were invited to make amendments to the minutes so that they can be considered for approval at the next meeting.

DISCUSSION:

1) **DISCUSSION OF FACTORS RELATED TO POSSIBLE MODIFICATIONS TO RDCS POLICIES FOR (1) EXCEPTION TO LOSS OF BUILDING ALLOCATIONS (ELBAs); AND (2) ON-GOING PROJECT ALLOCATIONS:**

Planning Commission discussed the proposed Exception to the Loss of Building Allocation policy and proposed changes to the On-Going Project Allocation policy. The Commission

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was asked to provide direction to staff on any recommended changes or refinements needed to the proposed ELBA policy or changes to the existing On-Going Project Allocation policy.

Chair Tanda asked SP Linder to explain this item to guests present. We're asking the Commission to consider two changes to the RDCS (Residential Development Control System). Looking for the Commission to evaluate a proposed policy and eventually provide guidance to City Council in making decisions for exceptions to loss of building allocation and also in allocating to on-going projects. There are two policy considerations before the Commission this evening. The exception to loss of building allocation (ELBA, extensions, development agreement amendment) are all synonymous terms for the commencement of construction date for projects that have received building allocations through our growth control systems.

Projects compete and those that receive high enough scores are awarded building allocations which eventually translate into the right to pull building permits. Allocations are based on a fiscal year and are required to commence construction on the units within that fiscal year. They receive the allocations about a year and a half in advance of when they need to commence construction on those units which is usually ample time in a normal economy. Things are not normal in the housing industry right now and we've had an unprecedented number of extension requests indicating the developers' inability to commence construction on the units in the fiscal year in which they've received the allocations. In order to establish guidelines for when projects are eligible to receive those extensions or exceptions to loss of building allocation, the Council has asked the Commission to review policy that sets up some standards for granting those exceptions or extensions. In putting together a policy, we started with our Municipal Code looking at what it tells us in granting exceptions to loss of building allocation. It says that we can consider those exceptions to loss of building allocations when there are circumstances that are outside of the developer's control and that the delays in the project are not a result of developer inaction. In putting together a draft policy these are the two tests that are further defined in the draft policy. Also, we produce the RDCS quarterly report that details per fiscal year where projects are and how well they've performed in receiving all of the development entitlements that are necessary to commence construction. As part of the policy we'd like to define what developer action is. We went back to the quarterly report and used the same steps with the first step being Planning Application and the final being Commencement of Construction on the units. There are 8 steps that we are proposing to define developer action because in defining developer inaction we're using the same steps to gauge whether or not a developer has taken every step possible short of commencement on whether we're going to consider an extension or not. We've developed a sliding scale as part of the policy and developers that have completed steps 1-6 with allocations starting in FY 06-07 would be eligible for a maximum of 40 months of extension. In putting the policy together, we selected steps 1-6 because these are the steps that can typically be completed without the assistance of bank financing. Banks are not lending for new construction and that seems to be what is stopping developers dead in their tracks. Our policy would reward those developers that have taken every step possible short of what they can't do without bank financing. That represents steps 1-6. Projects with 06-07 allocations would be eligible for a maximum of 40 months of cumulative extensions on that fiscal year. If for some reason they've come to their 40 months and are unable to perform, they would, pursuant to this policy, only lose the allocations for the phase that reaches the 40 month maximum. The reason for the sliding scale is that projects with later allocations (ie: those with allocations FY 09-10) would be eligible for a maximum of 12 month extensions because they're further out. Projects get a longer extension if they have completed step number 7, Recordation of the Final Map, a significant

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step in that the developer has made some significant financial investments in the project. At the time a map records a lot of the Public Works fees are due, they've taken a bank loan, and there are some significant financial commitments that they've locked in to. Our proposed policy would allow them a maximum of 50 months under which to perform. Should they not perform after the 50 months, it's just that single year of allocation that would expire. Most of these projects have multiple fiscal years so they wouldn't be without allocation, they would just have to move down to their next fiscal year of allocation. City Council did ask us to consider that there needs to be some flexibility with any proposed policy and that it's not one size fits all. There are some circumstances that preclude some developers from moving forward even through step 3. Some of which are unique environmental or CEQA requirements where we have to perform studies that could take several years, other projects have been waiting for the City to finish its downtown plan along with supporting CEQA documentation as well. Those are other circumstances where we could consider granting extensions even though they've not completed steps 1-6. The other test that is spelled out in the Municipal Code is that there are circumstances outside of the developer's control. We're defining steps 1-6 as actions that are within the developer's control, but the recent inability to secure financing is something that has caused many developers to request extensions as the banking industry is not lending for new residential construction. Council has recognized this as a circumstance beyond the developer's control. When that changes, there is language within the policy that once the banks start financing, that is no longer a circumstance that will be recognized. We have no idea when things will improve so this is a policy that we may need to revisit. At this point, there is nothing magical with 40 or 50 months, but a lot of these projects, as we grant extensions, they're winding up with a significant number of building allocations as things move out. That coupled with allocations that have been awarded to new projects – there are, in future years, some significant backlogs. We're hoping that this policy will assist with that and that projects that aren't able to perform and have reached a 40 or 50 month maximum, that phase will expire, but yet there are other phases that will allow the project to carry on.

That brings us to the on-going project allocation set asides. The City Council has traditionally set aside allocations for on-going projects that, under the current policy, have commenced on 50% of a phase and are currently in compliance with their development schedule. We've never had a problem with that, but now a lot of projects are done with 50% of that first phase and have stopped, and yet by being diligent and seeking extensions, are in compliance with their development schedule, but yet they're not building. Our current policy obligates us to award them more allocations when they're not using the ones they have. This is something that you and Council have talked about revisiting in that it's proven to be a very low threshold. As a second policy consideration there is some additional amended language proposing that a project must complete an entire first phase rather than 50% of a first phase, and also that the project has not requested an extension within the last 12 months. So if they're unable to keep up with what they have, we wouldn't be awarding additional allocations. We'd like to receive the Commission's input on these policies and Council would like us to return with policies incorporating your suggestions and thoughts on how to make these policies the best they can be.

Commissioner Escobar: How did you arrive at 40 to 50 months maximum extension?

SP Linder: It's 40 months if steps 1-6 are complete and 50 months if the final map is recorded. Looking at mostly the 06/07 timeframes, currently, the longest existing extension is for the Depot/Granary project at 48 months, but that is due to unusual circumstances (waiting for the City to complete Downtown plan & environmental review of the plan). We wanted to

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be equitable to all of our 06/07 projects.

CDD Molloy Previsich: Existing extension of 40 months is currently the longest.

Commissioner Escobar: The project allocation policy moves from 50% to 100%. Why 100%? Why not 75%?

SP Linder: Project phases aren't created equal some projects have large first phases and others don't. We currently have a project in foreclosure - it's for sale and has completed only half of the first phase. Logistically and administratively it would be more efficient if the first phase was complete, it also shows more effort that they are an on-going project. In the aforementioned project, someone is now buying half a phase and they have already gone on in two other competition years to get 30 future allotments.

Commissioner Koepp-Baker: Once the banks begin offering financing - what do we have as a measure to guarantee that the developers have applied for funding and been rejected?

SP Linder: We feel it would be prudent to ask for correspondence or substantiation from banks & lenders.

Commissioner Koepp-Baker: On a developer by developer basis?

CDD Molloy Previsich: There will be a General awareness of the health of housing and financial markets. We'll have to feel our way through it. The City Attorney is emphasizing that we must articulate policy guidance so that developers requests are all treated the same. We need to keep it up to date, apply it equally and not be perceived as making arbitrary decisions.

Commissioner Mueller: Developers can expect to get 40 months of extension and it could be solely a land value problem and we would be obligated to give a 40 month extension in a normal financial market.

CDD Molloy Previsich: Today, as we draft this policy, the markets have not recovered and we've already granted 40 month extensions for FY 06/07. Do we tell people next week that they can't get a 40 month extension when others already have one?

Commissioner Mueller: When we start building again, certain projects won't go due to market dynamics. As soon as you threaten to take allocations away (saying it's not an on-going project) you'll have a major impact on the developer's ability to finance the project and a direct negative impact on the appraisal of the land and the project. My source for this is a conversation I had about six months ago with appraisers who appraise construction projects in Morgan Hill. I think that if the policy is too stringent and it automatically rescinds allotments, the policy will have an impact on the ability of the developers to be successful.

CDD Molloy Previsich: This is a healthy discussion on what an appropriate policy would be. Council emphasized that they want a policy that responds to concerns about being arbitrary and treating people differently, while having flexibility, creativity, and not have those unintended consequences.

Commissioner Mueller: Financial impact of a change of this order of magnitude is just huge based on my conversations because allocations on a piece of property have an impact on the appraisal and what it takes for a developer to get a loan and the threat of them not being able to continue as a continuing project (this is what this proposed policy would do) - every project we have would now not be an on-going project because they all have extensions. This has a huge impact on projects like Mission Ranch, Capriano or any project in phase 6, 7 or 8 because now there is uncertainty if/when they'll be able to finish the project. We originally did the on-going category was to give certainty to developers that once they'd made a huge financial investment, they'd be able to continue. We're in hugely different times, but we have to understand the large impact this will have on the developers and on these land values. We need a policy because as we come out of it there's going to be some really funny things happening - we already had one project go back to the bank and another close to the same place, and how the land value readjusts has a tremendous impact on whether projects will be

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able to go forward or not. I'm very uncomfortable doing it this way.

Commissioner Moniz/Commissioner Koepp-Baker: Did you work with any of the builder's/applicants when working on this policy? Did the 11 applicants in the first FY respond and provide input? Can you define commencement of construction?

SP Linder: Yes, I asked for input on economic factors and I've had direct discussion with the applicants. Commencement of construction is that the pad is certified and you have a utility – either water or sewer - stubbed to the building site. It's an improved site and you've pulled a building permit, but this definition isn't a part of this discussion/packet – we can bring it back if becomes relevant.

Chair Tanda: How many of these steps do they need to complete to be eligible for an extension?

SP Linder: Most projects haven't finished step 2 and have received extensions. In going to the maximum, I'm proposing that steps 1-6 are complete for 06/07 allocations to receive the maximum 40 month extension.

Chair Tanda: We've already approved some extensions without any steps being completed. For 09/10 steps 1-6 must be completed? The maximum extension for 9/10 is 12 months if steps 1-6 are complete. This is a huge difference from the way it is now. If step 7 is complete, you get additional time and according to page 2 of the proposed policy, there's a maximum extension of 20, 30, 40, and 50 months but by subtracting the previous column on page 1 (12, 24, 36, 40), there is inconsistency in the length of additional extensions for completing step 7 between the fiscal years. Why the inconsistency?

CDD Molloy Previsich: The intent is that once they go to the 7th step they get a consistent additional 10 months.

Chair Tanda: As I look at all the charts using the proposed system, a number of these projects wouldn't qualify under the new system?

SP Linder: They wouldn't as of this date, but several still have until June 2010 to complete the steps. For example, the Granary has until June 30th 2011 before they'll ask for an additional extension.

Chair Tanda: They made a request and got 48 months of extensions but haven't completed any of the steps – you're saying under the new system they wouldn't get any extension?

SP Linder: The new system has a clause for unusual circumstance. Using the Granary example – they haven't been able to progress in steps 1-6 because they're waiting for the City to complete its Downtown Plan and supporting CEQA document. This is something beyond the developer's control – they cannot progress and we're trying to address these unique circumstances as part of the policy.

Chair Tanda: If the City Council were to approve the new procedure would it be retroactive?

SP Linder: Not intended to be retroactive.

Chair Tanda: Example: FY 09/10 Monterey-Gunter – it has done nothing yet was given an extension of 26 months. Some of this is illogical and I'm wondering if we'll return to it. We've been approving recently because "that's what we do". We weren't even questioning the extensions.

SP Linder: That's part of the reason for the policy. We're looking to provide consistency on how extensions are granted because until now it's been project by project. Sometimes we lose sight as we're comparing who has what, and we want to be equitable and not arbitrary in making these decisions equally for all of the developers.

Commissioner Mueller: It almost looks like there's a "magic" date in the future where financing will be done and everyone can build any phase. As you look at multiple years, it comes out that the projects are all stair-stepped down and end up in 2010 because they all go back to the original fiscal year. This isn't realistic – all phases trying to be built at the same time will be prohibited by the financial community and a project can stair-step off a cliff – late

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next year they may have no allocations.

SP Linder/CDD Molloy Previsich: Although it may appear that way, the policy is not structured with a “magic” date. We may need to re-visit this part of the policy.

As we adjust extensions outward, at some point, a developer may have more allocations in a fiscal year than they can deal with; if they’re looking at 40 in 09/10 they may not be able to produce that. If they are at the maximum extension, 20 of those may go away. Once they catch up they would be eligible to pick up 15 as an on-going project.

Commissioner Escobar: When this takes effect, if someone has 44 months, they will have run out of extensions; what they have now is grandparented in and whatever is remaining they’re still eligible for?

SP Linder: Yes, if there is anything remaining – not meant to be retroactive where we would be taking it away.

Commissioner Mueller: Effectively is retroactive. We’re going back to a project that’s been telling its bank for years that here’s what I’ve got and here’s the way the system works, and now we’re arbitrarily cutting it off – we’re going to start losing allocations. That may make the project unfinancible.

SP Linder: It’s always been a possibility that an extension wouldn’t be granted and allocations could be rescinded.

Commissioner Mueller: Looking at the policy in unusual times and if these times are reflected in the policy, we’re asking for trouble and could do damage to the developers because all of the sudden the rules have changed. Banks will tell them “I don’t want to talk to you.”

CDD Molloy Previsich: City Attorney is here and can comment and address legal aspects of the policy.

Chair Tanda opened the Public Hearing.

Rocke Garcia: My project is Capriano ~200 units and we’re ¾ of the way through. We’re having a lot of difficulty getting financing and moving ahead with our projects. I build a little differently - I do full improvements, record my map, do off-sites, get it all accepted by the City and my lots are done. I’m past step 7 and have submitted for Plan Check for the master plan for the houses, but have gone back to Architects to revise some home designs to reflect what we think the marketplace will accept. That’s why we’re missing steps 5 & 6, but have fully improved lots, pads certified, all sewers are in, etc. Think about that a little bit on how you address someone like us and Mr. Oliver. It’s a difficult situation - we would like to build. If you could extend out steps 5, 6, 7, & 8 – maybe re-work to recognize developers that have already done off-site improvements, have fully improved lots and have a bank loan, but banks are not willing to extend a construction loan, so it puts us in a dilemma. We have a way to go, but it could put us in a dilemma if the market continues its downward trend. We’re quite concerned on how to address this problem. Let’s be careful.

Chair Tanda: Any questions?

Commissioner Mueller: What do you think will happen if the bank sees your allocations go away?

Rocke Garcia: Depends on the builder – if you have a long-term relationship with the bank and are established as long term builder you won’t have as many problems.

Commissioner Escobar: You don’t perceive that as an issue for you?

Rocke Garcia: Not for me, because the banks have been good to us over the years, but I see it changing.

Commissioner Mueller: What happens if the bank sees your oldest allocations go away in 12 months, what does that do with your conversations with the bank?

Rocke Garcia: That’s as ugly as it can get, but in my particular case, we’ve done the off-site improvements, have fully developed lots and we have gone past step 7.

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Commissioner Mueller: That only means you only get another 10 months and then they go away. Your oldest phase, the allocations would go away.

SP Linder: They would go away for the phase that reaches that maximum

Rocke Garcia: Impossible task on my part – they definitely won't lend with something like that facing me.

Commissioner Koepp-Baker: It increases the liability and definitely reduces your asset and your leverage is lost.

Commissioner Mueller: The policy says is if you pick a year - say 06/07 you have allocations there - from June 07 you've got 4 years. So in June 2011, if you haven't built these, they'll go away. Since you haven't completed steps 5 & 6 it could be at 40 months which is even closer in. They get rescinded – they don't go on hold.

CDD Molloy Previsich: It would be August – 50 months out.

Commissioner Mueller: As it's written now, he won't meet the first 6 and the way it's worded, the allocations would go away in 40 months from now.

Rocke Garcia: That would be devastating.

Commissioner Mueller: Looking at the on-going – if you've gotten an extension in the last year you're now no longer available for on-going allocations.

Rocke Garcia: I would go bye-bye. I've got a loan against it now.

Commissioner Koepp-Baker: You would be in the position to have to sell it which you can't do.

Chair Tanda: This is very good dialogue – when we get to the City Attorney we'll have a robust set of questions.

Chris Borello: My family owns the Peet-Borello project and we're concerned with 1) ELBA having a negative impact on allocated projects and 2) the ability to obtain financing on new projects. Builders are struggling to stay afloat. Lenders are looking for more security before they lend money. This new policy creates uncertainty, affecting our ability to obtain financing. Markets drive development, not artificial timetables imposed on projects. The process needs to remain fluid from start to finish. Things change and we need to be able to move with the changes. 150 units seem to be the number that City Council is interested in doing different things with the entitlements. Proposal for you to consider for projects of 150 units and over: There is a big difference between townhouse projects and big, high-end single-family home lots like ours and differences need to be taken into consideration. I would like you to consider the following recommendations: 1) Request you to adopt a policy that defines an ongoing project for projects of 150 units or greater – project must commence construction on 50% of first allocated phase not to be less than 10 units. 2) Adopt a new policy for projects of less than 150 units – phases are smaller and it's easier to obtain financing. 3) Consider the way ongoing allocation is distributed. Your goal is to get ongoing projects finished, so instead of a one-size-fits-all policy regarding the amount of ongoing allocation per project, look at total project size. For example, a 250 unit project would get 20 units and a 100 unit project would get 10 units. You could apply a percentage to the overall project to get these projects finished.

Chair Tanda: Questions? None.

Maureen Upton: Representing Diana-Chan. I agree that this policy seems very stringent. Maybe there should be a 12 month period where the policy is reviewed and/or another workshop with developers before it goes back to City Council so there can be more input. For ongoing project allocations, continue the current policy for at least another 12 months with the 50% guideline. 100% would be very tough, especially if the economy doesn't turn around. To go to the bank with a brand new project like ours and have a policy like this in place would make it very difficult for us. This should be thought about carefully

Chair Tanda: Any questions? With no others in attendance indicating a wish to speak to the

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matter, the Public Hearing was closed.

City Attorney Wan: This discussion is taking place because the Municipal Code says that allocations expire if you don't start construction at a certain time. The only exception is if there are circumstances beyond a developer's control. This typically means regulatory barriers or that the City hasn't acted when it's supposed to, or things not the developer's fault. Now, the economy is the thing that's out of the developer's control and it really wasn't contemplated in the Ordinance. Now we're individually extending these development agreements as much as 48 months. We're pushing the limits out on an individual, contract by contract basis. Pretty soon, someone is rightly going to question this. What is the criteria for you to determine whether these developers are truly doing everything within their control to get these things ready and if somebody is getting 48 months, why shouldn't I? Two Legal considerations for this policy: 1) When dealing with people's property rights – something they've invested money into – you're making a decision as to whether their property right should be extended or not - you need to have rational, not arbitrary, policy that determines what the developer must demonstrate to show that they're doing everything they can and it is truly beyond their control. It can't look like you're doing it case-by-case. 2) Equal protection consideration - if one person gets 40 months, why not me? You have to establish some policy basis ahead of time so you don't get into this argument that just because somebody else got 50 months, I should get 50 months, too. Need a policy basis for fairness. These are the basic legal considerations we're asking you to consider when determining a rational policy on how long you're going to extend people's development agreements and why. There are some practical considerations, as well. Usually, development agreements are done after the environmental study is done and these may be considered stale after five years. There might be environmental change of circumstances, and these things deserve reconsideration after a certain amount of time. In terms of market, some of these development agreements were negotiated on some assumptions that were relevant 3 or 4 years ago – how big the houses are, the housing needs of the City, recreational needs of the City - these needs change over time. At some point, these negotiated development agreement provisions become stale and it may not make sense anymore to extend agreements that no longer meet Community needs. I can also see a situation where we extend an allotment 4 or 5 years and by the time the bank will consider financing the project, they think the market today demands smaller houses and smaller lots and they'll only give financing if these current conditions are met in your development. The developer will come back to us for renegotiation of their development agreement. Then you'll have to confront the question: Is it fair to renegotiate and extend old agreements or give the allotments to new developer asking for new allocations under more current assumptions. These are some practical considerations that we need to consider in addition to the legal considerations when setting new guidelines for extending the ELBA's.

Chair Tanda: Any questions?

Commissioner Liegl: Are there any ways of measuring what a developer is doing? Can we find out if developer is doing what he's supposed to be doing? Are the 7 steps the proper way of measuring? What if a developer gets so far along and then says: "I can relax now." How can we find out if they're stepping forward and doing their job? They're subject to doing good business.

City Attorney Wan: The guidelines being proposed now are one way of measuring.

Commissioner Liegl: I think there are other measurements we need to look at. Is he relaxing on it, putting time between the steps due to his own volition and not unforeseen circumstances? When we're allowing the developer to get extensions when he hasn't done anything due to his own fault, we have a problem. We need to find another criteria, it might not be this, it might be something else that needs to be done.

City Attorney Wan: Maybe we need evidence that they have applied for financing, who are

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they talking to and do they have a plan to develop, not just sell the entitlements? So, if a developer is thinking of holding on to allotments not to build but to sell the entitlements when the banks start financing again, the buyer is going to want some adjustments to the terms and conditions of the development agreement. Do you amend after all that time of extensions you've granted to that allotment?

Commissioner Mueller: The policy as proposed treats allocations different from year to year. Does that fit what you're suggesting?

City Attorney Wan: It depends in what year you awarded the allocation because the earlier they received the allocation, the sooner they encountered the economic downturn. Just because you establish this policy, it doesn't mean that it can't be amended if you and the Council see the economic downturn continuing to persist, developers are still affected and they deserve further extensions. The policy itself can be amended.

Commissioner Mueller: Within existing code we can request, before we grant an allocation, almost what ever we need to. Within our existing policies, we've allowed developers to scale and modify the models, as long as they don't reduce the point score of the project, to reflect market conditions. I think we can address some of the duration of the market with what we've been doing for years. The environmental ones, you can't, because the developers, over long periods, have to redo traffic studies at some point. It seems we can handle that under what we've been doing already. There are certain economic conditions that I don't think we can handle and that is if the land value fails to adjust to current market conditions. Some people just get allocations to sell the project – we know that happens. There are multiple projects in here that have done that, some of which have failed already or are in the process of failing. My concern is that by doing it the way this is structured, we're having an immediate impact on value of the land because of the value banks and appraisers put on having allocations on a project. That to me is not right. Some of the things that you mentioned, we can do under current policies and I think we have in the past. One thing we can't compensate for is land value - it doesn't adjust to true market trends.

City Attorney Wan: My legal concern is that we need to have more rational standards. There have to be rational standards that we articulate that guide the decision as to why we accept or reject certain extensions. The policy in front of you is fairly clear, people understand it, and people can set their expectations to it. You certainly can have standards that are more flexible, but they should not be ambiguous. You have to find a balance. The more ambiguous it is, the more challenges you'll likely face. Today, we don't have any standards beyond the words in the Code "beyond developer control." We need more criteria than that. This is a good proposal, but others can also work.

CDD Molloy Previsich: We need a policy to use and apply equally to everyone. It doesn't have to be stringent, you can have a generous policy, but it must be applied equally to all. The benefits of this policy are that you are defining developer action and inaction and defining circumstances beyond the developer's control. We're conceding that there are circumstances beyond the developer's control, but we're pushing developers toward taking the actions that the developer can take. If it's decided that we want to be fairly generous in how we manage this, you can set higher limits. Focus on the balance between threatening loss of allotments versus accommodating extension and trying to push them to take the actions that they can while being very clear that you're going to treat everyone the same.

Commissioner Escobar: Somehow we've created inequity in the way we've done extensions to this point. I don't know that this exists – the claim hasn't been made that we've granted extensions to one at the disadvantage of another. When we've granted extensions we've granted them under typical expressions of "things beyond my control" (Water District, EIR, PG & E). I don't think we've done it arbitrarily, we've done it with "things beyond my control" information in hand. This policy doesn't call for reconsiderations of allocations that

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are lost, only under exceptions. It says that unless there's an exception, that's the only time the Planning Commission can reconsider that loss. It assumes that when a developer loses those allocations, they're going to re-compete for them in the following year. That would be the only way that we could consider reassigning them because the policy the way it's written doesn't allow us to do that. Rather than automatic loss, we should consider criteria for reconsideration. We face a calamity if we take these investments away. Did we pick 40 months because that's what we've done up to now? A lot of people don't think that we'll be in this economic crisis for another 40 months. The only escape policy that this has is that we can reconsider it sometime in the future. Maybe we need to consider an escape policy for when we return to normal times.

CDD Molloy Previsich: 40 months is what we've done up to now. That's why we did the sliding scale for future year applications, like the 09/10, people don't need 40 months.

Chair Chair Tanda: Other comments?

CDD Molloy Previsich: In terms of past practice, developers have come one by one and asked for 12 months at a time and then they return again and ask for 12 more. They're looking for clear guidance. Some need development agreement amendments, which are ordinances and require application fees and processing and they don't want to do it every year. They'd like to file one application and go to the maximum rather than file repeated requests. They see it as streamlining.

Commissioner Mueller: Yes, it's streamlining but that is one way we keep the pressure on to keep things building because that's what the last revision of the RDCS said. We want them to build and build on time. We used to do it closer to the allocation year and everybody asked for first year extensions because they could never meet the deadline – could never turn the whole process.

CDD Molloy Previsich: We're in a situation now where someone has requested 24 month extensions and someone else says last month I only got 12 months – if I'd known I could ask for more, I would have. Policy guidance works both ways, not only for the Commission and Council, but also for the developers.

Commissioner Mueller: I'm just uncomfortable with doing this. We're going to have huge economic impacts on every project other than the ones that don't have developers. We've suggested looking at developer action by getting projects through the first 6 steps. That makes sense with some variation because that gets them ready to go. They won't get through all 6 steps until a real developer is involved. Past history says that when a project is sold, it takes about a year for it to catch back up and start building because it has to go through plan checks and adjustments to drawings. When we were doing a two year competition, we asked for half of the first phase because if we were doing competitions every two years, before they had to compete again, they could get there. That was the rationale behind it. Since we're doing competitions every year, it puts a lot of pressure on them. Past history says if a project sells, it will take a year for it to start building.

City Attorney Wan: I'm hearing that your concern goes to the drop dead, 40 month prescribed time frame that might cause lenders concern. If that is a concern we can explore more flexible language. Such as, if you come for an extension, you need to demonstrate a good faith effort to get the allotment to completion by doing these 6 things, but not have a timeline attached to it. Such as: demonstrate that you've pursued financing, that there are no changed circumstances to your Environmental study, and that you in fact, plan on building. What I'm looking for on a legal basis, is some guideline to guide the decision making process rather than the one-by-one case decision making that we're pursuing right now.

Commissioner Liegl: I can live with that.

Commissioner Mueller: I'd like to see the language. That sounds like a much better way to go than as prescriptive as we are now.

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CDD Molloy Previsich: Rather than an automatic rescission, we can reword this “you’ll be considered less favorably or more favorably if you’ve completed these types of steps.”

Commissioner Koepp-Baker: I agree – right now it’s too narrow. I think it needs work and can’t be approved tonight.

Commissioner Mueller: A problem that I have with Paragraph C is that it talks about General Plan changes or Specific Plan changes. There shouldn’t be a project that applied for allocations that doesn’t meet the current General Plan that’s in existence. They should never apply – you can’t even get a foot in the door. Downtown is a very unique circumstance, but that’s a City-started project. Within the current exception under not being the fault of the developer, we’ve asked the development community and we think it needs to be done differently. Until the City has a clear picture of what we’re asking, it seems like under that exception we can grant it to projects affected by that specific plan area because City is doing it. It’s not just Ordinance language, it’s initiative language that defines some of these things. It’s code, but it’s by the ballot language. If it’s City-initiated, that’s one thing. If a developer thinks he’s going to get an extension while he applies for a General Plan change, I don’t believe in that at all. They need to be in General Plan conformance before they ever start the process. That language needs to be cleared up a little bit.

CDD Molloy Previsich: We do have the circumstance where we have the multifamily low, 5-14 dwelling units per acre and the “modified attached” that allowed detached units, that has now expired and we anticipate that, even for allotted projects, some of them may want to, and have, filed applications for General Plan amendments to switch over to that new single-family high designation that sort of parallels the multi-family low, but still allows the detached units like they have been doing. We have a couple of applications for that.

Commissioner Mueller: Have a real problem even with them asking for a change in the rules halfway through their project. There may be reasons we want to do that, but they’re competing under their current project until they get that General Plan change.

CDD Molloy Previsich: This is for a project that’s already allotted under the old rules that allowed the modified attached, but now, because of the delays, those provisions have expired. It has to do with City regulations. We understand what you’re saying.

City Attorney Wan: I’m hearing that the Commissioners agree with the concept that we need guidelines, but wants rational guidelines that aren’t as stringent as we’re proposing – somewhere in between where there’s guidelines, but we maintain some flexibility.

Commissioner Koepp-Baker: In this community, we’re still small enough that if we can’t be flexible in working with developers, nobody wins – the City or the developer and the project goes nowhere and ends up in potential foreclosure. Once the banks begin offering financing, I think there should be a measure in there that says these developers have gone to the bank and they’re now getting financing. That would indicate that other developers may potentially, and bring your paperwork, which is what we did with a number of developers. We didn’t give the extensions. They brought paperwork and other statements from the bank that said they couldn’t get financing, so it wasn’t done arbitrarily it was done rather systematically after the first 3 or 4 months of it.

Commissioner Moniz: I would agree, either make it prescriptive or just strike it.

Chair Tanda: Any other suggestions for what we’d like to see in the next draft of the ELBA? I believe we’ve come to a consensus that we’d be looking for a new draft of the policy that incorporates the Commissioners’ comments.

CDD Molloy Previsich: That’s fine - I think we have some clear direction.

Chair Tanda: Let’s move on to the second policy – Allocations for on-going projects. Commissioners – your thoughts and feelings?

Commissioner Moniz: I was surprised that it’s more restrictive. I thought it would be much more flexible when it came to us. I’d like to see more flexibility - rather than make it harder,

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make it easier, but still provide the consistency recommended by the City Attorney – still fit with the context of the discussion.

Commissioner Koepp-Baker: I would agree with that based on an exception is allowed when it's due to extended City processing. There's far more than just delays in the Planning Department that affect it - we have no control over PG & E, SCVWD, or if we have enough rainfall to determine whether or not there are salamanders on someone's property. That's a very restrictive sentence.

CDD Molloy Previsich: Do we think that we need any amendments to the existing policy or are we satisfied with it as it is?

Commissioner Mueller: I think we need clarification – the current policy was based on competition every two years. It says you have to complete part of the first year's phase allocation because with the competition every two years, you could actually get out there and get it done. With the competition every year, you really can't quite get there. If they're going to be considered as an on-going project, they have to get somewhere through the first 6 steps because those really are the preparation for saying the only thing holding you up is financing. There are problems out there – the Wright-Dividend project has been held up for years by the Water District. The Kruse project is a true Environmental delay – they got saddled with minimum rainfall before they could even do the test and then they had to do the test in 3 consecutive years. That was a minimum 3 year delay. They didn't even hit minimum water requirements for 2 years. Those fall into pretty defined categories. We do need to say if you're going to meet on-going, since we're at yearly competition now, we ought to look for some level of progress in those first phases because those are phases that can be done relatively inexpensively. There has to be some level of progress within the 6 steps to get on the on-going list, because that says you're making the progress to get ready and that you haven't hit an Environmental problem or shows that you truly have a financing problem.

Commissioner Koepp-Baker: That shows good faith and then if you, at some point in the process, hit a stumbling block that you can't address, then you come back and explain what the stumbling block is and that is what has happened with 2 or 3 of the applications for extensions over the last 2 years.

CDD Molloy Previsich: Do we need a different policy for if we're in a one or two year competition? Or is it that if you're a project, you have to have at least gone through your discretionary permit process and submit your final map and improvement plans? Maybe you don't require them to get building permit plan check, but the intent would be that you want them to submit for their discretionary permits and their subdivision map.

Commissioner Mueller: You want to get on with the process. Even if a project has a well-defined plan, as soon as that project gets sold, we start it over. It takes at least a year to do that. The reason I made a distinction between the one and the two year competition is when we did two year competitions, almost all of the projects could be ready for the next competition. We didn't have the problem we're having now with the one year when we're coming back so quickly. Need to look for some progress.

CDD Molloy Previsich: It seems you'd want them to at least finish their discretionary permit processes in that first year in order to qualify for an on-going allocation.

Chair Tanda: Would that be steps 1-6?

CDD Molloy Previsich: No, steps 1 and 2 – maybe go to 3 and at least submit their map and improvement plan, but that's tough to pull off in a year. If it's an annual competition, maybe certain projects wouldn't be able to get an on-going allotment. They're just simply not ripe enough to be able to get another 15 the very next year. How far do you want them to go before they're eligible for on-going allotments? Planning applications approved? Map and improvement plan submitted, as well?

City Attorney Wan: They could come back 2 or 3 years later and be eligible.

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CDD Molloy Previsich: Right – whenever they’ve reached that threshold, that’s when they become eligible for on-going.

Commissioner Mueller: Planning approved - does that mean we’d have a tentative map?

SP Linder: Tentative map approval, site and architectural plan, development agreement approved, design review approval and CEQA document prepared.

CDD Molloy Previsich: Steps 1 and 2 show a lot of good faith effort.

Commissioner Moniz: I’m comfortable with that – these are things have defined the project.

Chair Tanda The proposal is that you would be eligible for an on-going allocation if you’ve completed steps 1 and 2. Is the Commission at that point? On the on-going, we’re talking about modifying the proposal in front of us rather than, as in the former one, completely developing it.

Commissioner Escobar: I think staff would be prudent to take what we’re modifying and give it some thought and come back the next time and give us a reaction to it.

CDD Molloy Previsich: We’ll come back with a package with both of them in it.

Commissioner Mueller: I think we need to have them as a package because we need the development community to comment on them as a package. The two, while they’re separate policies, have a huge impact on the project and its ability to gain financing.

Commissioner Moniz: Are you planning on having another workshop or keeping it at staff level and coming back before Commission for another discussion in 2-4 weeks?

SP Linder: We do have an ELBA request that is suspended somewhere between Planning Commission and Council – which Council has continued until November 4th. We do have time to come back.

Commissioner Moniz: What do you think the best course would be?

CDD Molloy Previsich: We’ve emailed all of our residential developers the entire report, materials, and proposal and let them know the date of the discussion and encouraged them to give us any feedback that they have.

Commissioner Koep-Baker: Does what you’ve given us reflect their comments?

SP Linder: To date, yes.

Commissioner Mueller: When do you think you’d come back with this? I think we’ve got a little bit of time if Council’s not going to hear it until November.

CDD Molloy Previsich: Potentially next Tuesday. The Council requested that the Planning Commission develop something so that they could adopt the policy sometime in October.

Chair Tanda: I would presume that they want us to adopt the best policy possible versus one that happens to be timely.

CDD Molloy Previsich: We’ve got time to develop an appropriate policy.

Chair Tanda: That would be the point, even if somebody’s making a request to be considered by the City Council in November, unless there’s something urgent like they’re going to lose financing or lose the project?

SP Linder: Their allocation expires in December, so there is a sense of urgency.

Chair Tanda: Is there a way, if we need another month to get the very best policy possible, to get that resolved?

CDD Molloy Previsich: I think we’ve got plenty of time to work on this and not forward something until the Commission’s comfortable with it.

Chair Tanda: I think we must understand the impacts on the development community and at the same time meet the legal standard of being consistent with some set of criteria. I think we’ve provided pretty good input. Are there any other comments at this time? Hearing none, let’s move to Item 2.

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STUDY SESSION:

2)

PROPOSED CIRCULATION ELEMENT AMENDMENT:

The purpose of this meeting is for the Planning Commission to review and understand the content of the proposed General Plan Circulation Element Amendment, with focus on the text of the proposed Element.

CDD Molloy Previsich: We've previously talked through the findings of the Circulation Element EIR and Transportation Impact Analysis, but you expressed a desire last time to spend some focused time on the actual text amendment. How would you like to do this?

Chair Tanda: I would suggest that we go page by page with a time limit – will we have another opportunity to work on this?

CDD Molloy Previsich: Staff's preference is that the purpose of this study session is to take a look at the text amendment and make sure you understand it. At that point, staff's recommendation would be that that's it and the next time we have meetings before the Planning Commission will be with the final EIR and in Public Hearing settings. This is a study session/workshop because it was pointed out that you really haven't had a chance to take a hard look at the strikeouts and deletions.

Chair Tanda: Our final crack would be when the final EIR is completed?

CDD Molloy Previsich: EIR information was mailed out that the Public Comment period was extended until October 2nd.

Chair Tanda: If we're unable to complete this document tonight, would we still have time to finish the last part of the study session and have it still be meaningful to you?

CDD Molloy Previsich: If that's the case, we can conclude the study session at next week's meeting.

Page 1 Comments

CDD Molloy Previsich: We're adding a circulation goal of having a circulation system based on smart growth with more emphasis on balanced, multi-modal transportation systems, especially in Downtown. We want to look through that lens and we want to make these circulation text amendments to achieve that goal.

Chair Tanda: I'd like to see a goal on safety, meaning that one of the major objectives of transportation engineers and planners is that you have a safe system. I think it's worth repeating and perhaps in the process, we find some meaningful ways to make it safe.

Commissioner Escobar: Could you augment goal# 9?

CDD Molloy Previsich: The word safe is already included in goals 1 and 6. So I'm not sure if that's enough of an emphasis?

Chair Tanda: It would certainly be for bicyclists and pedestrians, but for automobiles, the way you make it safer is you have the appropriate traffic operation applications and techniques all the way down to traffic calming. Almost all cities have a goal of traffic calming in neighborhoods. In fact, in some jurisdictions, it's the most important goal that they have, because they haven't built a good and adequate arterial system and traffic cuts through neighborhoods. I accept that we may not need to emphasize traffic calming in the circulation goals, but I think we should have something on safety. Often safety, by the way, is not handled through engineering, but is handled by education.

Commissioner Mueller: Traffic calming in neighborhoods could be important to residents and will probably come up again when we get into the Walnut Grove stuff.

Page 2 Comments

Commissioner Mueller: I don't understand why the first sentence in paragraph 1 needs to be in a general plan element.

CDD Molloy Previsich: About the trip reduction? It's in our existing Circulation Element.

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Commissioner Mueller: That we didn't take any traffic count for? That's the sentence I'm having a problem with.

CDD Molloy Previsich: The 2001 Circulation Element assumes a 10% trip reduction. The traffic modeling for the 2009 Circulation Element doesn't assume that. We wanted to make that clear.

Commissioner Mueller: Somehow I think a traffic Circulation Element would be up a level from that without necessarily having it. Maybe it needs to be worded where there are things in here that say that we want to get people to go do that.

CDD Molloy Previsich: This is the introductory section of the Circulation Element and talks about the development methodology for how we developed the Circulation Element, so in 2001, part of the methodology is that they used a 10% trip reduction.

Commissioner Mueller: Part of my logic is that there are things in here that say we're going to try to put people on transit and on bikes. Right at the start, we say that when doing this element, we didn't take any of that into account. Almost feels like a built in conflict. That means the system is conservative and I think that's the right thing to do, especially in the state of transit today, but it makes the element itself seem inconsistent and that's where I have a problem with the element language itself.

Chair Tanda: Note it somewhere/somewhat that we're over-designing the system by that 10%. It may not really be 10%, because actual transit and bicycle usage may be on the order of 3%, but we're giving it 0% in the modeling. We are conservative in that respect.

CDD Molloy Previsich: Yes, it is conservative, so as future traffic studies get done, and maybe we choose to vary that assumption for valid reasons, we can note that, but our baseline doesn't include it. I get your point about revising it so it's a little bit more internally consistent.

Commissioner Mueller: Or make that a part of the background staff report that gets this thing adopted so it's in the record someplace without necessarily being in the element. Here's the assumptions that we put into this whole thing - we've got many pages of how the model was developed and it's this internal consistency I'm concerned about.

CDD Molloy Previsich: Maybe we start by saying that "the traffic model done for the purpose of planning the 2009 Citywide Circulation Element didn't assume trip reduction, however the goals and policies of this element strive to attain..." Somehow...we're not trying to wordsmith it tonight.

Commissioner Mueller: In the 4th paragraph that starts: "Travel forecast" the inserted language, while that's a goal that we want to do, I worry about our intent for Downtown and our intent for generating revenue for the City. Our intent is to get people off of the freeway into the commercial zone next to 101 or to get them off the freeway to go Downtown.

CDD Molloy Previsich: So maybe the intent of that inserted language is a disincentive for regional commute travel.

Commissioner Mueller: We need to qualify it somehow or tailor it another way because it's obvious that the Downtown we're talking about building requires every Morgan Hill resident plus some to use it, and to have language that says we're doing a disincentive to get them there is not what we want. We want commute traffic as much as it wants to go there.

Commissioner Escobar: It needs to be restructured in the sense that we want to provide for traffic coming off the freeway to come to our commercial centers and not spill into our residential streets. I think we can do both.

Commissioner Koepp-Baker: I need a clarification of why we think people are going to come off the highway into our City if they aren't going to stop. They come off the highway now at Cochrane and come down to Butterfield and cut over to Monterey south. They don't go back on the highway because it's still congested at Tennant. I don't understand why we want a disincentive to people to come off of the highway and into Morgan Hill. Nominally the

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people who are commuting from San Jose to Gilroy or Hollister are going to stay on the highway. Some of them come off at Cochrane, come down Butterfield and probably go down Monterey and some go back on the highway, if they can get back on. Bottom line is that it doesn't increase our sales tax dollars in Morgan Hill to disincentivise coming off the highway.

Commissioner Escobar: Why would people get off the highway if they didn't live here or they weren't visiting Morgan Hill to begin with?

Commissioner Koepp-Baker: Why put the language in there?

CDD Molloy Previsich: The language is in there because it's some amount of the reason of why we accept service level E at the freeway ramps and adjacent intersections. As I understand it, before Highway 101 was widened, there was all kinds of through regional commute traffic pouring through Morgan Hill not stopping and shopping or going Downtown, with a very negative impact on the community. This is geared at the level of service where you still allow for wanting them to come into our commercial centers and Downtown, but not just to commute through.

Commissioner Mueller: If they're just going through town, you don't necessarily want to incentivise them. It's a very funny balance.

Commissioner Koepp-Baker: I don't know why we include that phraseology. It's counter-productive.

Chair Tanda: They're trying to address spillover traffic on higher classification streets. When they become congested, you get traffic spillover onto lower classification streets. It's typical that when the freeway gets congested, traffic will go to the largest and closest arterial that's parallel. When that gets congested or they don't have enough lanes, they then go to neighborhood collector streets at which point you have traffic calming issues. If you're a resident, you don't want the spillover traffic going through Morgan Hill, but if you're a commuter, you want to cut through because, at times, that would be quicker. Apparently in the General Plan, we're trying to somehow discourage people from getting off on streets in Morgan Hill and cutting over to a north-south arterial and traveling up and down. It's a noble idea, but I don't know if it's going to work.

CDD Molloy Previsich: Under our current policies, we have LOS D+ standard at all those intersections, and under the current Circulation Element it says that the local road network will need to be improved to handle increases in both regional travel passing through Morgan Hill and local traffic. So we were going to improve our local road system to accommodate both regional traffic traveling through Morgan Hill and yes, we want to do some of that, but we're proposing not to create D+ conditions so people can freely travel through Morgan Hill on their way to San Jose. We'd have LOS E standard for some of those intersections, so you can still do that, but it's just a little bit of a disincentive and not putting the burden on Morgan Hill to pay for widening intersections to accommodate regional through travel. I think that the language can be revised to accommodate traffic – put it more in the phrase of protecting neighborhoods from adverse impacts of spillover from regional commute traffic.

Chair Tanda: People are going to get on Santa Teresa and travel to San Jose if 101 becomes congested enough. That's what was formerly done on what was called "Blood Alley" until 101 got improved. I understand what you're trying to do, but I don't think it will work.

Commissioner Liegl: One of the things that I've seen as a disincentive for me is I'll travel a freeway before I get on to a road where you have stop at every corner for a stop light or sign – it slows you down - I'd stay on the road before doing that. Is there any way that we can do that through traffic control?

Chair Tanda: You can as long as the City has a system set up where they can control the signal. You can either set it up to facilitate the flow of traffic - which is exactly what you want once you're in your car - or discourage traffic once you're out of the car and in your home when you'd prefer traffic not go down street that you're on . I think the City is working

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toward having a smart traffic system that would allow for those sorts of strategic decisions to be made. You have to be concerned to the extent that you discourage traffic from City arterials, they will go on to local, neighborhood streets. You want as many cars as possible on the City arterials. You want to discourage them on the residential streets.

Commissioner Mueller: There are some things outside our control that could have a major impact on us. The arterial design and the right of way level having extra capacity is super important. Some of this next language leads me to believe that we would narrow right of ways and I think that's a big mistake on the arterials. I don't have a problem with this element saying we need fewer lanes from what we're going to plan to actually build within this time frame, but keep the wider right-of-ways in a multi-modal configuration so land is available if needed. We don't know how Gilroy's going to grow and we don't know what San Jose is going to do with the Coyote Valley urban reserve and that will have a huge impact on our arterial traffic.

Commissioner Liegl: Look how the traffic increased when they put in the outlets.

Commissioner Mueller: We need to look at that last sentence of the 5th paragraph where it talks about future build, but there's also one in there that says "accommodate the possibility of future widening". I think we need to strengthen that and some of the other language that says our arterial right of ways are going to be wide, because if we don't retain wide right of ways at Hill, Murphy, Butterfield, Monterey and Santa Teresa Boulevard; and Coyote Valley develops at some point then 1) we'll get blasted with traffic 2) we'll have no way to go to San Jose and ask them to put \$15 million into street widening in Morgan Hill and the right of way is already there. If the right of way is gone, they'll say it's infeasible. If we've retained the right of way, we can do it. This language leaves me uncomfortable that we haven't got that covered.

Chair Tanda: I agree. Before we move on, the high speed rail is a project that is obviously transportation but does very little for Morgan Hill in terms of inter-City traffic and nothing for local, but it is a transportation component that should be acknowledged. I have some language that should go into the plan: The high speed rail to serve the inter-regional travel in California is in the planning stage. If it is implemented, the alignment will pass through Morgan Hill. Local traffic will not be impacted and the impact of through traffic in Morgan Hill is unknown at this time. I think the plan should still acknowledge that this centerpiece of ground infrastructure in the nation is at least noted in our General Plan Update. It doesn't do anything in terms of levels of service. Moving on to the capacity being provided for north/south streets. Begins on page 2 and rolls over to pages 3 & 4.

Commissioner Mueller: It's the right of way I'm concerned with. We need some sort of language in here that maintains wider right of ways.

CDD Molloy Previsich: That is the intent with the new multi-modal, wide right of way designs that we have, and we should make it clear that for multi-modal arterials, we want the wide ones for everything except Condit for the north/south.

Commissioner Mueller: Condit is more of a frontage road that serves between intersections, but Murphy will be the bigger one, causing the risk of the wrath of everybody.

Chair Tanda: The model says that in the year 2030, with these assumptions, you need two through lanes on these north/south arterials, but we're going to go years beyond that and Coyote Valley and other places will fully develop, and we will need more lanes. We need the right of way to be able to accommodate that in the future or at least for that future City Council to say "we love congestion and we're not going to change it over", but they need the option. Once we lose the right of way, it's totally lost.

Commissioner Mueller: In looking at the right of way, one thing to look at is if we landscape and do separated bike paths and it works in appropriate areas of the City and then we have to make a dramatic change to it to get the extra lanes that we need, some future Council/Planning

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Commission will get a lot of push-back. If you've got a nice, green multi-modal section in there, to lose it to get an extra lane is going to be problematic. Classic example: The Walnut Grove extension - we should have probably built it when the Chevy dealer or neighborhood went in, because we knew it went in there. When you delay that linkage, it becomes a huge problem. I think this multi-modal may have that problem in the future.

Commissioner Koepp-Baker: When you buy a house in the City and there's a sign up that says "Potential Future Roadway", which we have in some areas of the City, then you're at least notified that that could potentially be a roadway. If we give up the right to purchase right of way now, we'll be in trouble in subsequent years because we can't go back and buy it.

CDD Molloy Previsich: The multi-modal section was designed so that if, say in 2040, you really do need 4 lanes, you've got sufficient right of way to make it work. We need to amend the language for Butterfield, Hale/Santa Teresa, Murphy and Monterey and emphasize that it's wide right of way for the multi-modal arterial that would be for future expansion. Like the earlier page says, "Design of certain arterials will accommodate the possibility of future widening." Right now, it couches it and says "In the event that 101 is not built to 10 lanes." We can broaden that out.

Commissioner Mueller: The South County study said that at build-out, the proposed freeway system and the transit system as defined to date gets saturated. If you look at the end case, it seems like everything is in trouble.

CDD Molloy Previsich: We'll make it more specific that it's the wide, multi-modal sections that we have in mind for those facilities.

Chair Tanda: To be able to accommodate the necessary lanes past the year 2030.

CDD Molloy Previsich: If needed.

Chair Tanda: Because 2030 makes a significant assumption about the development in Coyote Valley which, when it's developed, will be larger than Morgan Hill in terms of population and jobs. That will likely occur at some point in the future. How do other Commissioners feel about this additional right of way, because having been around this business for a long time, there are often people who would like to limit the number of lanes on a roadway rationalizing that the more constrained it is, the more likely it is that you won't have development and somehow the cart will lead the horse.

Commissioner Koepp-Baker: I've lived in a community where that happened and they didn't buy right of way and they couldn't and the businesses moved out. It was not a large community, but they depended on the sales tax dollars from those businesses and when they didn't get it, the businesses folded because the people wouldn't get into that scramble on that piece of roadway to get somewhere. I think it's critical to buy the right of way at the beginning - put it in General Plan and in the policy and that's what we look at.

Commissioner Mueller: The language needs to be strong enough that the Circulation Element allows us to go after the wider right of way.

CDD Molloy Previsich: Right, for the impact fee and the acquisitions, we want to make it clear that we want that wide right of way.

Commissioner Mueller: From a conversation I had with Jim Ashcraft the other day, there's a legal requirement that the Circulation Element says, before the City can go after a right of way, that the Circulation Element says I need all that right of way. This future widening - I want to make sure that however we get it in here - either the design standard or however it is - it needs to be strong enough to meet that legal requirement. If we don't get it now, we won't have it.

Commissioner Hart: I agree - even if the right of way is purchased now, it doesn't have to be pressed into use later. I agree that it should be procured now.

Commissioner Liegl: Same as everybody else has been saying - if we don't make sure that we have access to it, we'll be in trouble in a few years when we need it. Examples: 85 - they

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had to re-purchase a whole lot of land to finish 85 and that cost the city a whole lot of money. In Buffalo New York, to complete their Humboldt Parkway, they had to tear down half of the city and that cost them a lot because they had to buy the homes from all those people that had developed. We need to plan ahead, get it done.

Commissioner Moniz: Nothing new to add.

Chair Tanda: It's unanimous then. That takes us to the next two pages – pages 3 & 4. It's noted on page 4 that Page 5 has been superceded. The map on page 5 is superceded because the lanes don't match the narrative and it also says it on page 4.

CDD Molloy Previsich: Map 4 is the current one that is going to be eliminated and replaced with a new diagram.

Commissioner Moniz: I have a comment on page 3, the Madrone Parkway. The goal is to have Madrone Parkway as a grade separation at Union Pacific RR, and then you add possibly an at-grade facility in exchange for the at-grade crossing at San Pedro. Why would you want to eliminate one? Is there a requirement that you can only have so many?

CDD Molloy Previsich: The policy says that in the long term, Madrone Parkway is planned to be grade separated from the Union Pacific railroad tracks. However, as an alternate or interim improvement, the City may pursue a two lane, at-grade crossing in exchange for closing an existing two lane at-grade crossing, such as at San Pedro. That's because through our experience with PUC and UP, they will not let you establish new at grade crossings. Potentially, we could look at it and compare it and they might say I'd like you to close this one and you can open this one because it's going to have fewer cars and will net fewer people crossing. We received a comment letter from the PUC on the EIR which said that they were neutral on it, so they are open to the idea maybe in the future of us sitting down and talking.

Commissioner Moniz: Has there been a history of accidents at San Pedro? Is there a reason that it's unsafe?

Commissioner Escobar: The issue is that it's a general statewide policy to limit the number of at grade crossings and to do everything reasonable to eliminate at grade crossings. It's a PUC/Statewide adopted policy. They're not necessarily looking at individual cities to determine if this is a safer route than another one, they don't want to add any more opportunities.

CDD Molloy Previsich: The reality is that they will not allow new at-grade crossings. What this language does is gives a clue that we might at some point in the future have a conversation about which at grade crossing we would prefer to have – San Pedro or Madrone Parkway. We can make a proposal to them - they may or may not agree with us.

Commissioner Liegl: Are we running into a problem by closing off San Pedro with the Police Department? Right now the PD has two access roads and one crosses San Pedro over the tracks to get to Monterey.

CDD Molloy Previsich: We haven't gotten into those details. This just says that at some point, we may pursue this. If we get to that point where we're going to have that conversation, we'll gather input from emergency, fire department, trip counts, etc.

Commissioner Escobar: We're just adding latitude to our situation to allow us to make that decision.

Chair Tanda: Moving along, I have a question regarding goals. There isn't a goal one and the goals don't match the circulation goals that are up in the front.

CDD Molloy Previsich: There is a goal one – it's after the proposed new map, goal one is off to the right – we couldn't get it to format. Goal one is "A balanced, safe and efficient circulation system for all segments of the community".

Chair Tanda: How do these goals that you have the narrative about, relate to the circulation goals on page 1?

CDD Molloy Previsich: Those are the goals, so you have the goal and then you have the

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policies and actions that relate to that particular goal.

Commissioner Mueller: Goal one in the margin reads just like the goal one in the Circulation Element.

CDD Molloy Previsich: Yes, it's the same goals. After all the level of service tables, then you'll see goal two and goal three.

Chair Tanda: In goal one is where we should have the policies regarding safety. To my earlier comments about highlighting safety: As an alternative, we could populate goal one with appropriate provisions regarding safety.

CDD Molloy Previsich: Under 1D it does say objectives such as safe and uncongested neighborhoods. That's where we could begin to weave in some of that traffic calming and operational language.

Chair Tanda: It would almost be ideal that the goal of the City would have a lower crash rate than the State of California. Have an active program to try to reduce the number of crashes that you have. The Police Department is doing that with DUI programs, it doesn't just have to be engineering. This is a good place to break.

CDD Molloy Previsich: We'll continue the conversation next week on the 22nd.

Commissioner Mueller: I think that this level of conversation is really helpful, especially when we get to the Public Hearing if we can work these wording refinement kinds of things out prior.

ANNOUNCEMENTS

CDD Molloy Previsich: Looking forward, the EIR comment period for the Downtown Specific Plan closed yesterday. We got some comments, but not a huge volume of comments. We're trying to get our arms around that. Tentatively, we're thinking that the Downtown Specific Plan may be on your October 13th Agenda. It may not come up until the 27th but we're shooting for the 13th. We've also done a memo that we'll email to you tomorrow of the tentative schedules for some of these other processes like the Circulation Element and the Housing Element and so forth.

Chair Tanda: Any other comments? We meet again next Tuesday.

CDD Molloy Previsich: Next Tuesday is it for September. The Downtown Plan is not until October. On September 29th, the Housing Element Task Force is going to have a community workshop on the draft housing element and it will come to you at one of your regular October meetings – whichever one the specific plan isn't at.

ADJOURNMENT Noting that there was no further business for the Planning Commission at this meeting, Chair Tanda adjourned the meeting at 9:30 p.m.

MINUTES RECORDED AND TRANSCRIBED BY:

Andi Borowski, Municipal Services Assistant